

Hon. Robert Lasnik

Motion date: December 23,2016

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

QOTD film Investment, LTD	)	NO. 16-cv-371 RSL
	)	
Plaintiff,	)	
	)	MOTION TO REQUIRE
v.	)	QOTD TO POST A NON-
	)	RESIDENT LITIGATION
MARY STARR, et als	)	BOND
Defendants.	)	

**INTRODUCTION**

Defendant Sonny Nguyen (“NGUYEN”) moves the Court for an order to require Plaintiff QOTD Film Investment Ltd. (“QOTD”) to post a non-resident litigation security or cost bonds in an amount to allow NGUYEN to secure his costs and attorney fees in this action. This is necessary in the event that this court dismisses the complaint and awards NGUYEN costs and attorney fees.

1           **BASIS OF MOTION**

2           Scott J. Kannady attorney for QOTD in QOTD Film Investment Ltd v Doe 1 et al,  
3  
4 16-cv-1366-WYD-MEH<sup>1</sup>, in its complaint, page 1 filed in the USDC for the district of  
5 Colorado on May 25,2016, described QOTD as:

6                           ***“a business organization organized in the United Kingdom”***

7  
8           QOTD appears to not even be a domestic corporation, but an off-shore entity.  
9 QOTD omitted describing its foreign domicile in its complaints against NGUYEN.  
10

11  
12           Sonny Nguyen is innocent of infringement. He did not download *Queen of the*  
13 *Desert*. He doesn’t even own his own computer. He has no knowledge of anyone who  
14 downloaded a movie from the internet using BitTorrent or any other means. Sonny  
15 Nguyen did not aid, direct, facilitate, benefit from or share in proceeds of any violation of  
16 the law by anyone. See Declaration of Non-Infringment attached.<sup>2</sup>  
17

18           Given Nguyen’s innocence he is likely to prevailing in this lawsuit.  
19  
20

21           **THE LAW**

22           A court may require a non-resident or foreign plaintiff to post a bond to cover  
23 costs and attorney fees that may be ordered should the defendant prevail. The bond would  
24  
25

26 <sup>1</sup> Attachment 1 QOTD Film Investment Ltd v Doe 1 et al, 16-cv-1366-WYD-MEH (ECF 1) USDC Colorado

27 <sup>2</sup> Attachment 2. Nguyen declaration ECF No 77

1 assure a defendant would be able to enforce the court's order for costs and fees against an  
 2 off-shore party having no local assets. Patrick v Lynden Transport, 765 P.2d 1375 (Alaska  
 3 1998). Chagnon v Hofferaman, 230 Va 176, 333 S.E.2d 268 (1985). Many U.S. District  
 4 Courts have adopted local rules for ordering security bonds. It appears that the U.S.  
 5 District Court for Western Washington has not adopted a local rule regulating a non-  
 6 resident or foreign entity cost or security bond. But our local rule for civil procedure 65.1  
 7 describes the requirements of a surety bond in the event a bond is ordered.  
 8

9 In absence of a specific local rule, the federal court is free to exercise its discretion  
 10 with respect to ordering an off-shore plaintiff to post a litigation bond. Many federal  
 11 district courts are guided by state practice or policies when considering litigation security  
 12 bonds, according to specific nature of the case and an amount to assure compliance with  
 13 possible judgments including costs and attorney fees. Atlanta Shipping Court v Chemical  
 14 Bank 818 F.2d 240 (2d cir 1987). Aggarwal v Ponce School of Medicine, 745 F.2d 723  
 15 (1<sup>st</sup> cir 1984).  
 16

17 Washington State RCW 4.84.210 provides such as guidance for this Court:  
 18

19 Security for costs.  
 20

21 When a plaintiff in an action, or in a garnishment or other proceeding, resides out of  
 22 the county, or is a foreign corporation, or begins such action or proceeding as the assignee  
 23 of some other person or of a firm or corporation, as to all causes of action sued upon,  
 24 security for the costs and charges which may be awarded against such plaintiff may be  
 25 required by the defendant or garnishee defendant. When required, all proceedings in the  
 26 action or proceeding shall be stayed until a bond, executed by two or more persons, or by  
 27

1 a surety company authorized to do business in this state be filed with the clerk,  
 2 conditioned that they will pay such costs and charges as may be awarded against the  
 3 plaintiff by judgment, or in the progress of the action or proceeding, not exceeding the  
 4 sum of two hundred dollars. A new or additional bond may be ordered by the court or  
 5 judge, upon proof that the original bond is insufficient security, and proceedings in the  
 6 action or proceeding stayed until such new or additional bond be executed and filed. The  
 7 plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of a bond.  
 8 [ 1929 c 103 § 1; Code 1881 § 527; 1877 p 111 § 531; 1854 p 204 § 389; RRS § 495.],

9 In White Coral Corp. v. Geyser Giant Clam Farms, LLC, 145 Wn. App. 862, 866,  
 10 189 P.3d 205 (2008) rev denied.(2009) a \$125,000 non-residency bond was found  
 11 reasonable to assure compliance with a court order.

## 12 **AMOUNT OF BOND IN THIS CASE**

13 The amount of a surety bond should be reasonable but in an amount sufficient to  
 14 cover defense costs and attorney fees determined by the circumstance of the parties and  
 15 nature of the case. The Court should consider the following:  
 16

17 a. This is a Copyright case. Plaintiff seeks from Mr. Nguyen statutory damages of  
 18 up to \$150,000, costs and attorney fees. Stakes are high for Mr. Nguyen.  
 19

20 b. QOTD relies upon identifying specific IP addresses using a witness residing in  
 21 Germany, Mr.Daniel Macek, a consultant to Mavericeye UG, (“MEU”) a company  
 22 organized in Germany. Declaration of Daniel Macek (ECF No. 6). Witness depositions  
 23 will be very expensive for Mr. Nguyen.  
 24  
 25  
 26  
 27

c. QOTD describes using forensic and propriety technology by MEU for its investigation. There is no assurance that its technology passes the Daubert test for accuracy and reliability, FRCP 702. Reliability and accuracy are not even alleged in the complaint. Defense experts will be required to show how MEU, using its secret, proprietary system has identified so many persons innocent of infringement.

d. Sonny Nguyen is innocent.<sup>1</sup> It appears from other dismissals, QOTD failed to properly investigate this case. Moreover, QOTD bolstered its complaint with an allegation of perceived “Significant Bit Torrent Activity”. Because of this allegation, this Court denied dismissal of QOTD case against Nguyen based on assigned IP address alone. (Judge Lasnik’s Order, ECF No. 70). Thereafter, NGUYEN through his attorneys has asked QOTD’s attorneys to produce:

Details regarding “significant BitTorrent activities in which defendant Nguyen IP address participated during the relevant period”, specifically the date/times, hash # of the files and movie titles supporting your allegations of ‘significant activity’ which Judge Lasnik relies upon in his decision not to dismiss the complaint.

To date, QOTD attorney has not provided this simple information. This means that QOTD’s allegations are still unsupported by reliable facts or Mr Lowe is unwilling to cooperate in an exchange of information that could settle this dispute. In other words, QOTD prefers to continue litigating this matter against an innocent non-infringer instead of resolving this matter.

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<sup>1</sup> ATTACHMENT 2 Declaration of Nguyen, (ECF 77)

d. The court should consider recent attorney and fee orders for similar cases in the 9<sup>th</sup> circuit:

--Last year, USDC Judge Thomas O. Rice of the Eastern District of Washington ordered plaintiff to pay an innocent defendant his costs and attorney fees in an amount greater than \$100,000. The case uses the same investigator, Mr. Daniel Macek and the same secret IP detecting system employed by MEU. Mr. David Lowe, attorney for QOTD was also the attorney on that case. Elf-man v Lamberson, 2:13-cv-00395 EDWA,( ECF No. 1100, filed Jan 9,2015)<sup>1</sup>

--Last week, December 2,2016 Federal Magistrate Judge Stacie Beckerman recommended a \$ 17,500 award to an innocent defendant in Cobbler-Nevada v Gonzales, 3:15-cv-00866-SB, D.Or.(ECF No. 51)<sup>2</sup> The reasons for the judgment against plaintiff are amply described in her recommendations and worth considering for imposing a reasonable litigation bond in the case against Mr. Nguyen, particularly the vexatious practices by movie plaintiffs in so many of these cases.

--Six months ago, (June 10,2016) the 9<sup>th</sup> Cir Court of appeals affirmed an order of sanctions against the attorneys in a series of copyright movie cases under Ingenuity 13 v Doe, 2:12-cv-8333-ODW-JC ( ECF No. 130) filed May 6,2013<sup>3</sup>. Of particular interest are

<sup>1</sup> Attachment 3. Elf-man v Lamberson, 2:13-cv-00395 EDWA,( ECF No. 1100, filed Jan 9,2015)

<sup>2</sup> Attachment 4. Cobbler-Nevada v Gonzales, 3:15-cv-00866-SB, D.Or.(ECF No. 51)

<sup>3</sup> Attachment 5 Ingenuity 13 v Doe, 2:12-cv-8333-ODW-JC ( ECF No. 130) filed May 6,2013

the comments during oral arguments by Judge Harry Pregeron on the Appeals panel reviewing the court order imposing attorney fees, costs and other sanctions. These comments can be reviewed on the Youtube channel for the 9<sup>th</sup> Cir. Paul Hansmeier Esq. v John Doe, 13-55859, (9<sup>th</sup> Cir, May 4,2015). Judge Pregeron describes the details of the business practices of attorneys representing off-shore movie companies suing individuals for copyright infringement of downloading seeded movies on BitTorrent.<sup>1</sup>

### CONCLUSION

The above supports an order imposing a litigation bond of **no less than \$150,000**, an amount consistent with recent awards against similarly situated vexatious plaintiffs cited herein. The amount is also consistent with the innocence of the defendant Sonny Nguyen and that QOTD is an off-shore company with no known assets in Washington State to respond to NGUYEN's damages, costs and attorney fees should this matter be dismissed.

The qualification of the surety should be ordered in accordance with our LCR 65.1 with the conditions expressed in RCW 4.84.210.

Respectfully submitted,, December 8, 2016

S/ Joe Chalverus  
Joseph Chalverus  
Attorney for Sonny Nguyen

<sup>1</sup> <https://www.youtube.com/watch?v=ObZDipKRH0c&t=2738s>, starting at 20.40 mins.

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the forgoing with the Clerk for the foregoing with the clerk of the Court using the CM/ECF system, which will send notification of such filing to all appearing parties in this matter.

December 8, 2016.

S// Joe Chalverus  
Joseph Chalverus, 13449  
Attorney for Sonny Nguyen